

IN THE UNITED STATES  
CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NO. 2308 { ARTHUR B. CALLAHAM,  
Plaintiff in Error,  
vs.  
UNITED STATES OF AMERICA,  
Defendants in Error.

NO. 2305 { ARTHUR B. CALLAHAM,  
Appellant,  
vs.  
JOHN B. MARSHALL, as  
United States Commissioner, etc.,  
Appellee.

BRIEF FOR THE TERRITORY OF ALASKA

J. H. COBB,  
Counsel for the Territory.



## STATEMENT.

The first Legislature of the Territory of Alaska passed the following poll tax law:

### CHAPTER 54.

(H. B. No. 98.)

AN ACT to impose a poll tax upon male persons in the Territory of Alaska and providing means for its collection.

*Be it enacted by the Legislature of the Territory of Alaska:*

Section 1. That there is hereby made, imposed and levied upon each male person, except soldiers, sailors in the United States Navy or Revenue Cutter service, volunteer firemen, paupers, insane persons, or Territorial charges, within the Territory of Alaska or the waters thereof, over the age of twenty-one years, and under the age of fifty years, an annual tax in the sum of four dollars to be paid and collected in the manner provided in the following sections of this act.

Sec. 2. That the commissioner of each precinct in the Territory of Alaska, shall, on or before the first day of March in each year, set down upon such blanks as the Treasurer of the Territory of Alaska may prescribe, the names of all persons residing within his precinct subject to the tax herein provided for; one of such blanks shall be transmitted by the commissioner to the Treasurer of the Territory and the other shall be retained by him. At the time of transmitting one copy of said duplicate list of names of the persons subject to the tax herein provided for within his precinct, the commissioner shall cause to be published in at least one newspaper of general circulation published

within his precinct or if there be no newspaper then by posting in five public places within his precinct a notice setting forth that the poll tax provided for in this act is due and payable between certain dates and that the payment thereof will become delinquent as provided in this act, and warning all persons to pay the same, and that in case of failure to pay the same, penalties, as herein provided for, will be imposed and it shall be the duty of every person liable to pay such tax, to pay the same to the commissioner within the time in which such notice specifies.

Sec. 3. The tax herein provided for shall be paid between the first Monday in the month of April and the first Monday in the month of August in each year.

Sec. 4. It shall be the duty of the commissioner to receipt to each person upon payment of the poll tax herein provided for and the receipt so delivered shall be the only evidence of payment.

Sec. 5. Every person indebted to one who neglects or refuses, after demand, to pay a poll tax becomes liable therefor and must pay the same for such other person after service upon him by the Commissioner of a notice in writing stating the name of such person.

Sec. 6. Every person paying the poll tax of another may deduct the same from any indebtedness to such other person. The commissioner must demand payment of poll tax from every person liable therefor and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any personal property owned by such person, and any property thus seized shall be sold as provided by law for the sale of personal property on execution except that three days' notice of the time and place of the sale shall be sufficient.

Sec. 7. It shall be the duty of the commissioner to collect and enforce the collection of all unpaid taxes by giving notice in writing to such delinquent, personally or by mail, and such delinquent shall pay a penalty of one dollar in addition to such tax.

Sec. 8. The Territorial Treasurer must, before the first Monday in March in each year, deliver to each com-

missioner in the Territory of Alaska blank poll tax receipts, in book form with stubs numbered the same as the receipts, of one hundred in each book a sufficient number for each commissioner. The form of such receipts and stubs shall be prescribed by the Territorial Treasurer and shall be approved by the Governor of the Territory.

Sec. 9. The commissioner shall, before entering upon the performance of his duties as herein prescribed, execute a bond to the Territory of Alaska in the sum to be fixed by the Territorial Treasurer which shall not be less than double the amount of money which will probably come into his hands under this act during any one year. Said bond shall be executed with two or more sureties and the same shall be approved by the Territorial Treasurer; said bond shall be conditioned for the faithful discharge of the duties of his office and the said bond shall be filed in the office of the Territorial Treasurer.

Sec. 10. The commissioner shall keep an accurate account of all moneys received by him under the provisions of this act, and he shall, not later than the first day in September in each year, transmit the same to the Territorial Treasurer. Such statement shall be verified by the affidavit of the commissioner to the effect that the same is in all respects a full and true statement of all moneys received by him under the provisions of this act; and after the first day of September in each year, the commissioner shall, at least once in three months, file an additional statement setting forth any taxes and penalties collected by him under the provisions of this act during such period of three months, and shall transmit such moneys to the Territorial Treasurer; such supplemental statement shall be made and verified, as herein provided for the first statement.

The commissioner, for services rendered under the provisions of this act, shall receive as full compensation fifteen per centum of all taxes collected, except those collected by action, civil or criminal, and twenty per centum of all delinquent taxes and penalties.

Sec. 11. The Territorial Treasurer shall make and pre-

scribe all rules and regulations to carry into effect the provisions of this act.

Sec. 12. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum of not more than one hundred dollars nor less than five dollars, or imprisoned in the federal jail for not more than thirty days nor less than one day.

Sec. 13. This bill shall take effect from and after its passage.

Approved, May 1, 1913.

The Act, by its terms, went into effect May 1st, 1913.

The Commissioner for the Juneau precinct, having taken the prescribed steps for collecting the tax, A. B. Callaham instituted one of these proceedings to enjoin its collection. The Court below sustained a general demurrer to the complaint, and dismissed the suit, and Callaham appealed.

A criminal complaint, under the Act, was filed against Callaham for refusing to pay the tax, and he was convicted, and brings error. The appellant and plaintiff in error has filed the same brief in each one of these cases, and we shall follow the example set.

#### FIRST—THE INJUNCTION SUIT.

The Court below based its ruling in sustaining the demurrer, upon the ground that plaintiff (appellant) had a plain, speedy and adequate remedy at law, and the bill presented nothing invoking the interposition of the equity powers of the Court. This



phase of the case is not touched upon in the brief of the appellant; and yet we think it conclusive of the appeal.

Ist, High in Injunctions, 2nd, Ed. sec 485, and authorities cited.

## SECOND—THE CRIMINAL ACTION.

It is not contended by the plaintiff in error, that the Legislature did not have the power under the organic act, to levy a poll tax; nor to make it a misdemeanor to fail to pay it. His contention, as we understand it, is: 1st, That the Legislature did not intend that the tax should be paid for the year 1913; and 2nd, That the entire act is void because it imposes upon the Commissioners, the duty of collecting the tax. We will deal with these contentions in the order stated.

FIRST:—Was the tax laid for the year 1913? The first section provides: "That there is hereby made, imposed, and levied upon each male person \* \* \* an annual tax of four dollars, to be paid and collected in the manner provided in the following sections of this Act."

Section 3 makes the tax payable between the first Monday in April and the first Monday in August of each year; while section 2 prescribes certain lists of persons liable to the tax to be made up by the commissioners and transmitted to the treasurer and notice to be published on or before the first day of March of each year. Section 6 makes it the duty of

the Commissioner to demand and collect the tax from each person liable therefor.

The Act passed with the emergency clause and went into effect May 1st, 1913.

Plaintiff in error claims, that because the time had passed in the year 1913, when the Commissioners were to make up and transmit to the Treasurer the lists of names, no tax could be collected for the year 1913, or that the Legislature did not intend it to be collected for the current year. But the liability for the tax is not dependent upon whether the lists are made up and transmitted to the Treasurer. The law itself makes, imposes, and levies the tax. The provisions regarding the transmitting of the lists of names, etc., are merely directory and prescribe a convenient method of procedure. To hold otherwise, it would follow, that if for the year 1914, say, Mr. Callaham's name should be omitted from the lists, or the lists for a certain precinct should not be made up within the time prescribed, Mr. Callaham would be released from the tax for that year, and so would all persons in the particular precinct, while others would be liable. A construction leading to such results will not be adopted by this court, unless unavoidably compelled by the language of the Act.

“When the law becomes operative as an entirety on the date prescribed by the Legislature, the fact that as to some persons and matters affected by it, the law is of full operation immediately upon the passing into effect and as to others its operation is



not so full and complete until a future day or event stated, is immaterial."

*Hopkins v. Scott*, 38 Neb. 661, 57, N. W. Rep. 391.

*State v. Stuht*, 52 Neb. 209, 71 N. W. Rep. 941.

The fact that that portion of the law providing for the return of lists of names to the Treasurer on or before March 1st, could not become operative until 1914, would not in itself prevent the rest of the act from becoming operative on May 1st, 1913, in accordance with the expressed will of the Legislature. The Legislature could have, in express terms, dispensed with the return of the lists for 1913 on or before March 1st. But why dispense with something that time itself had already dispensed with? The fact remains that the Legislature did make and levy an annual poll tax on May 1st, 1913, payable on or before the first Monday in August.

Besides the Treasurer is given power by section 11, to "make and prescribe all rules and regulations to carry into effect the provisions of this act."

The record is silent as to whether such rules were prescribed, and in that case the Court will presume that they were. Again in section 10, provision is made for collections of such taxes, as have not been paid on the first Monday in August, and report and return thereof.

The Court will take judicial notice of the fact

that this was the first Legislature for Alaska; that the Territory had, when the Legislature met, no revenue laws whatever, and that some revenue for the current year was indispensable if the current expenses of the Territorial Government were to be paid. The Legislature passed three revenue bills.

1st: A license law, and filing fee upon corporations. Session Laws, chap. 11. This act was passed April 21st, and went into effect in ninety days.

2nd: A license tax in business. Cap. 52. This act was passed May 1st, and went into effect in ninety days.

3rd: A poll tax, the act under discussion, which was passed May 1st, with the emergency clause, and went into immediate effect.

Yet the court is asked to hold, that while the Legislature did not intend the law to be effective until March 1st, 1914, it stultified itself by passing it with the emergency clause, putting it into effect May 1st, 1913.

This brings us to the third and last point of the defendant in error; viz:

### IS THE POLL TAX INVALID BECAUSE COMMISSIONERS ARE CHARGED WITH THE DUTY OF ITS COLLECTIONS?

Defendant in error contends, that because the Act of Congress, creating the Legislature provides that no person, "holding a commission or appointment under the United States, shall hold any office

under the government of said Territory," the Legislature was deprived of the power to impose new duties upon the Territorial officers already in existence—that any law imposing such duties is *ultra vires* and void.

The contention is of far-reaching importance, and pushed to its legitimate conclusion, either emasculates the Alaska Legislature of practically all powers, or compels it to create an entirely new set of offices, in addition to those Territorial offices already provided by the Act of Congress. Laws passed by the law-making department are but vain and empty fulminations, until interpreted and applied by the judicial, and enforced by the executive departments. If the contention of plaintiff in error is correct, then the Alaska Legislature can pass no law, which, for its enforcement, imposes a new duty on the Governor, the marshal, the secretary of the District, or the clerks of the Courts.

The words quoted, and upon which the plaintiff in error relies, are not, we think, to receive so narrow a construction. There exists in a territory, as in a state, through the line of separation may not be so marked in the former as in the latter, that dual system of government peculiar to the United States. There is the National Government with officers for the administration of the national laws, of which postmasters, and officers of the customs and of the army and navy are examples readily suggesting themselves; and there are the territorial officers to

The act in question may be subject to criticism. But we think it clear that the Alaska Legislature had the power to lay a poll tax, and provide for its collection through the existing local officials, and this it did.

We ask that the judgment below be affirmed.

Respectfully submitted,

J. H. COBB,

Counsel for the Territory  
Alaska.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 2308.

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**Reply Brief of Appellant.**

In our opening brief we discussed the incompatibility of the offices of United States Commissioner and Poll Tax Collector, and showed that the Poll Tax Act imposed upon the Commissioner new duties not contemplated by the Act of Congress creating the office of United States Commissioner, and contrary to the provisions of said Act as well as of the common law (Brief, pp. 8, 9, 10 and 11); that therefore the Poll Tax Act was absolutely illegal, void and of no effect, and that the United States Commissioner, designated as Poll Tax Collector, had no legal right to collect the tax.

We advanced the proposition that the legislature did not intend that the tax should be collected prior

to 1914, or, as has been attempted to be collected, for 1913, and that therefore there is no ground whatever upon which to base the attempted collection of the tax or the criminal prosecution of the plaintiff in error during the year 1913. (Brief, pp. 14, 15, 16, 17, 18 and 19.)

We desire to call the Court's attention again to these propositions which the defendant in error and appellee has failed to seriously disprove.

The only point in the brief of the defendant in error and appellee which we desire to reply to is that of the equitable jurisdiction of the Court in the injunction case.

Since the trial Court wrote no opinion in the injunction case, the record fails to disclose the Court's reason for sustaining the demurrer therein. We, therefore, in our opening brief merely discussed the Poll Tax Act itself, deeming it proper for the defendant in error to raise the jurisdictional question.

The defendant in error has cited but one authority on the point, to wit, 1st High on Injunctions, Second edition, section 485. An examination of the whole of this section discloses the general rule with the various exceptions thereto. The general rule is to the effect that equitable relief will not be granted to prevent the collection of a tax alleged to be void or illegal merely because of its illegality, hardship or irregularity, unless there are some special circumstances attending the collection of the tax which would bring the case within some recognized head of equity jurisdiction. Where, therefore, these spe-



cial circumstances obtain, equitable relief will be granted.

*1st High on Injunctions*, 4th ed., sec. 485.

Our contention is that on account of the peculiar circumstances of this case, which are fully set out in the complaint, the cause is peculiarly one of equitable cognizance. One of the recognized heads of equity jurisdiction is the want of a plain, speedy and adequate remedy at law. In the case at bar such a want exists. An examination of the Poll Tax Act fails to disclose an adequate remedy at law, or any remedy at all, against the collection of this tax should the same be wrongfully collected. There being no plain, speedy and adequate remedy at law, the powers of a court of equity were in this injunction case rightfully invoked. It is not permitted to sue the Territory of Alaska to recover the amount of the tax which might be collected and turned into the territorial treasury under this Act, and the taxpayer is, therefore, without any legal remedy.

*Pyle vs. Brenneman*, 122 Fed. 787.

In a somewhat similar case the Court held that the relief of a single taxpayer in an action at law is so inadequate as to amount to a denial of justice, whereas an equitable suit brought by one taxpayer for himself and all others similarly situated would, by means of one decree, give an entire community relief.

*Williams vs. Grant Co. Court*, 53 Amer. Rep. 94.

In the recent case of *King Co. Washington et al. vs. Northern Pacific Ry. Co.*, 196 Fed. 323, this Court upheld the equitable jurisdiction of the trial

Court on the ground that the enforcement of the tax would cast a cloud upon the company's title, and in the opinion of the Court, the exceptions to the general rule above quoted were noted. It was further held that the collection of an illegal tax could be enjoined where the tax, if paid, would go into the State treasury, and so be beyond reach in an action at law, in which event complainant would have no legal remedy.

"The power of taxation is the power to take from the owner that which is his to help defray the expense of the protection received from the Government, and, if in any case this power is illegally exercised, it is an invasion of private right, and, in the absence of some specific limitation of the remedy imposed by law, the party injured may resort to the courts to vindicate his right against those who attempt such invasion *by any form of action which he could use against any other wrongdoer with respect to the same class of wrongs.*"\*

*Western Union Tel. Co. vs. Trapp*, 186 Fed. 114.  
In another recent case the Court said:

"The adequate remedy at law, which will deprive a court of equity jurisdiction must be as certain, complete, prompt and efficient to attain the ends of justice as the remedy in equity."

*Atchison, T. & S. F. Ry. Co. vs. Sullivan*, 173 Fed. 456.

There can be no doubt that in the case at bar the relief prayed for would be infinitely more certain, complete, prompt and efficient than any legal relief

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\*The italics are ours.

would be, provided relief could be had in an action at law, which we submit could not be obtained.

*Raymond vs. Chicago Union T. Co.*, 207 U. S. 20.

In like manner:

“A suit to enjoin the collection of a tax is recognized as a proper remedy where the tax is unauthorized.”

*Kellaher et al. vs. City of Portland*, 112 Pac. 1076.

In the

*Michigan Telephone Tax Cases*, 185 Fed. 634, where the collector was under the State law made personally liable for the amount of taxes received by him though he remitted the same to the State Treasury, and where the alleged invalid tax on telephone companies constituted a lien on their real estate and cast a cloud on their title, and the tax was alleged to have been illegally assessed, the Court held that complainants' remedy at law by paying the tax under protest and suing to recover the same, was not so adequate and complete as to preclude a resort to equity.

The two cases cited by counsel, to wit: *State vs. Stuht and Hopkins vs. Scott*, are, we submit, not pertinent as authorities in the case at bar for the reason that the Acts, the constitutionality of which was attacked, were similar in no way to our Poll Tax Act, and the reasons assigned by the Courts in their opinions therein are, except in the broadest of generalities, inapplicable here.

We have carefully read these two cases, but have been unable to discover the language in the last para-

graph on page 8 of appellee's brief quoted by counsel as of the same.

For these reasons we request that the judgment below be reversed in both cases.

Respectfully submitted,

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